

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Harry William Lott,

Plaintiff,

v.

Case No. 2:13-cv-990

Kmart,

Defendant.

OPINION AND ORDER

This action was filed by Harry William Lott against Kmart in the Marietta Municipal Court, Washington County, Ohio, on September 16, 2013. On October 4, 2013, Kmart filed a notice of removal of the action to this court based on diversity of citizenship. In his complaint, plaintiff alleges that he had applied for a cashier's job at Kmart on several occasions. He further alleges that his sister obtained a job at Kmart, but that he was not hired. Plaintiff contends that he then charged Kmart with discriminating against him by failing to hire him because he was male. Plaintiff asserts in his complaint that he "believes that his failure to hire is based on Title VII of the Civil Rights Act of 1964 over his gender of being a male." Doc. 3, p. 2. He further alleges that Kmart has an anti-discrimination policy in place to show new employees, and that Kmart engaged in fraud by concealing this anti-discrimination policy from him. Doc. 3, p. 2.

On October 11, 2013, Kmart moved to dismiss the complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim for which relief may be granted. In an order filed on January 22, 2014, the motion to dismiss was granted in regard to plaintiff's Title VII and fraud claims. See Doc. 19. The motion to dismiss

was denied as to plaintiff's discrimination claim under Ohio Rev. Code §4112.02, because the doctrines of res judicata and collateral estoppel relied upon by Kmart did not bar this state law claim. The order also granted leave to Kmart to file a supplemental motion to dismiss addressing the Ohio law discrimination claim.

Kmart filed a supplemental motion to dismiss on February 11, 2014. See Doc. 21. Plaintiff filed no response to the supplemental motion to dismiss. The supplemental motion was referred to a magistrate judge for report and recommendation. See Doc. 22. This matter is now before the court for consideration of the May 9, 2014, report and recommendation of the magistrate judge.

The report and recommendation specifically advised the parties that failure to object to the report and recommendation within fourteen days would "result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the decision of the District Court." Doc. 25, p. 6. No objections have been filed and that the time for filing such objections has expired. The court has reviewed the report and recommendation, and agrees with the reasoning and recommendation of the magistrate judge. The court hereby adopts the report and recommendation of the magistrate judge (Doc. 25). Kmart's supplemental motion to dismiss (Doc. 21) is granted, and plaintiff's Ohio discrimination claim is dismissed pursuant to Rule 12(b)(6) for failure to state a claim for which relief may be granted. As all of plaintiff's claims have now been dismissed, this action is hereby dismissed.

Date: May 28, 2014

s/James L. Graham
James L. Graham
United States District Judge